

Introduced by Senator Solis
(Principal coauthor: Assembly Member Jackson)

January 21, 1999

An act to amend Section 6343 of the Family Code, to amend Sections 166, 273.5, 273.6, 1328, 1163.3, and 12028.5 of, to repeal Sections 273.55 and 273.56 of, and to add Section 11163.6 to, the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as introduced, Solis. Domestic violence.

(1) Existing law authorizes a court, after notice and a hearing, to issue an order requiring a restrained person to participate in batterer's treatment counseling.

This bill would require the court, after notice and a hearing, to order a restrained person to participate in a batterer's treatment program that has been approved by the probation department pursuant to a specified provision of law.

(2) Existing law punishes as a contempt of court the willful disobedience of any process or lawfully issued court order.

This bill would also punish as a contempt of court, the willful disobedience of a court order or out-of-state court order, including orders pending trial that are made at the request of a party alleging domestic violence. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) Existing law requires that if probation is granted to any person who is convicted of willfully inflicting a traumatic condition, as defined, on a person with a specified domestic relationship to that person, and the person has previously

been convicted of 2 or more violations of that offense within a specified period of time, the court must impose as a condition of probation, imprisonment in the county jail for not less than 30 days and participation in a batterer's treatment program as specified.

This bill would eliminate from the above provisions, the requirement of participation in a batterer's treatment program and would require instead, that as a condition of probation, a defendant who has previously been convicted of a violation of the above offense, within a specified period of time, be imprisoned in a county jail for not less than 15 days, or if the defendant has previously been convicted of 2 or more offenses within 7 years of the current violation, he or she be imprisoned in a county jail for not less than 60 days.

(4) Existing law requires that any person convicted of the offense of willful infliction of corporal injury who has previously been convicted of specified assaultive offenses within the last 7 years be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison for 2, 4, or 5 years or by both imprisonment and a fine up to \$10,000.

Existing law also requires that if probation is granted to a person sentenced under that provision, it must be a condition of probation that he or she be imprisoned in a county jail for not less than 15 days and participate in and successfully complete a batterer's treatment program. However, if probation is granted to a person who has been convicted of that offense and has had 2 or more prior convictions of that offense within 7 years, it must be a condition of probation that he or she be imprisoned in a county jail for not less than 60 days and that he or she participate in and successfully complete a batterer's treatment program.

This bill would delete these 2 provisions of law.

(5) Existing law punishes as a crime any intentional and knowing violation of a protective order or other order, as defined.

This bill would amend the above provision by expanding the list of specified orders to include any order issued by an other state as recognized under a specified provision of law



relating to out-of-state orders. By expanding the definition of a crime, this bill imposes a state-mandated local program.

(6) Existing law requires that when service is made on a minor, it must be made on the minor's parent, guardian, conservator, or similar fiduciary, or other specified persons.

This bill would authorize the court having jurisdiction of the case to appoint a guardian ad litem to receive service of a subpoena of the child and to produce the child in court.

(7) Existing law authorizes a county to establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths. However, existing law prohibits the disclosure of confidential and privileged information that is relevant to a domestic violence death review team.

This bill would authorize disclosure by the domestic violence review team of otherwise confidential or privileged information regarding the victim or any other information deemed relevant, to members of that team. The bill would make it a misdemeanor punishable by fine and up to one year in a county jail, for any member of the team, their agency or employee, who without prior approval of all of the members of the team, discloses any information obtained during the investigation. The bill would also authorize the disclosure of specified types of information to a domestic violence death review team, notwithstanding other provisions of law including the lawyer-client privilege, the psychotherapist-client privilege, the domestic violence victim-counselor privilege, and the sexual assault victim-counselor privilege, if the information is about a person who died as a result of, or whose death was likely the result of, domestic violence, a minor child of that deceased person, or a person who has been convicted of causing a death in connection with an incidence of domestic violence. By creating a new crime, this bill would impose a state-mandated local program.

The bill would also require the domestic violence review teams to collect and summarize data regarding the statistical occurrence of specified circumstances of deaths resulting from domestic violence.



(8) Existing law authorizes specified law enforcement officers who are at the scene of a family violence incident involving a threat to human life or physical assault, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search. This provision also defines the terms “abuse,” “family violence,” and “family or household member.”

This bill instead would replace the term ‘family violence’ with the term “domestic violence,” would delete the above-mentioned definitions and would replace them with definitions of the terms “abuse” and “domestic violence” that track the definitions of those terms in the Family Code.

(9) Under existing federal law, known as the Violent Crime Control and Law Enforcement Act of 1994, it is unlawful for any person who is subject to a restraining order to possess or purchase a firearm or ammunition.

This bill would declare the Legislature’s intent to codify the above-mentioned federal law.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6343 of the Family Code is
2 amended to read:
3 6343. (a) After notice and a hearing, the court may
4 issue an order requiring any party to participate in
5 counseling with a licensed mental health professional, or
6 through other community programs and services that
7 provide appropriate counseling, including, but not
8 limited to, mental health or substance abuse services,
9 where it is shown that the parties intend to continue to
10 reside in the same household or have continued to reside
11 in the same household after previous instances of



1 domestic violence. The court may also order a restrained
2 party to participate in a batterer's treatment ~~counseling~~
3 *program approved by the probation department as*
4 *provided in Section 1203.097 of the Penal Code.*

5 (b) Where there has been a history of domestic
6 violence between the parties or where a protective order,
7 as defined in Section 6218, is in effect, at the request of the
8 party alleging domestic violence in a written declaration
9 under penalty of perjury or who is protected by the order,
10 the parties shall participate in counseling separately and
11 at separate times. The court may also order a restrained
12 party to participate in a batterer's treatment ~~counseling~~
13 *program approved by the probation department as*
14 *provided in Section 1203.097 of the Penal Code*, for up to
15 one year, provided that the program selected has
16 counseling available for the designated period of time.

17 (c) Each party shall bear the cost of his or her own
18 counseling separately, unless good cause appears for a
19 different apportionment.

20 SEC. 2. Section 166 of the Penal Code is amended to
21 read:

22 166. (a) Except as provided in subdivisions (b) and
23 (c), every person guilty of any contempt of court, of any
24 of the following kinds, is guilty of a misdemeanor:

25 (1) Disorderly, contemptuous, or insolent behavior
26 committed during the sitting of any court of justice, in
27 immediate view and presence of the court, and directly
28 tending to interrupt its proceedings or to impair the
29 respect due to its authority.

30 (2) Behavior as specified in paragraph (1) committed
31 in the presence of any referee, while actually engaged in
32 any trial or hearing, pursuant to the order of any court, or
33 in the presence of any jury while actually sitting for the
34 trial of a cause, or upon any inquest or other proceedings
35 authorized by law.

36 (3) Any breach of the peace, noise, or other
37 disturbance directly tending to interrupt the proceedings
38 of any court.

39 (4) Willful disobedience of any process or order
40 lawfully issued by any court.

1 (5) *Willful disobedience of any court order or*
2 *out-of-state court order, lawfully issued by any court,*
3 *including orders pending trial, made at the request of a*
4 *party alleging domestic violence.*

5 (6) Resistance willfully offered by any person to the
6 lawful order or process of any court.

7 ~~(6)~~

8 (7) The contumacious and unlawful refusal of any
9 person to be sworn as a witness; or, when so sworn, the like
10 refusal to answer any material question.

11 ~~(7)~~

12 (8) The publication of a false or grossly inaccurate
13 report of the proceedings of any court.

14 ~~(8)~~

15 (9) Presenting to any court having power to pass
16 sentence upon any prisoner under conviction, or to any
17 member of the court, any affidavit or testimony or
18 representation of any kind, verbal or written, in
19 aggravation or mitigation of the punishment to be
20 imposed upon the prisoner, except as provided in this
21 code.

22 (b) (1) Any person who is guilty of contempt of court
23 under paragraph (4) of subdivision (a) by willfully
24 contacting a victim by phone, mail, or directly and who
25 has been previously convicted of a violation of Section
26 646.9 shall be punished by imprisonment in a county jail
27 for not more than one year, by a fine of five thousand
28 dollars (\$5,000), or by both that fine and imprisonment.

29 (2) For the purposes of sentencing under this
30 subdivision, each contact shall constitute a separate
31 violation of this subdivision.

32 (3) The present incarceration of a person who makes
33 contact with a victim in violation of paragraph (1) is not
34 a defense to a violation of this subdivision.

35 (c) (1) Notwithstanding paragraph (4) of subdivision
36 (a), any willful and knowing violation of any protective
37 order or stay away court order issued pursuant to Section
38 136.2, in a pending criminal proceeding involving
39 domestic violence, as defined in Section 13700, or issued
40 as a condition of probation after a conviction in a criminal



1 proceeding involving domestic violence, as defined in
2 Section 13700, which is an order described in paragraph
3 (3), shall constitute contempt of court, a misdemeanor,
4 punishable by imprisonment in a county jail for not more
5 than one year, by a fine of not more than one thousand
6 dollars (\$1,000), or by both that imprisonment and the
7 fine.

8 (2) If a violation of paragraph (1) results in a physical
9 injury, the person shall be imprisoned in a county jail for
10 at least 48 hours, whether a fine or imprisonment is
11 imposed, or the sentence is suspended.

12 (3) Paragraphs (1) and (2) shall apply to the following
13 court orders:

14 (A) Any order issued pursuant to Section 6320 of the
15 Family Code.

16 (B) An order excluding one party from the family
17 dwelling or from the dwelling of the other.

18 (C) An order enjoining a party from specified
19 behavior that the court determined was necessary to
20 effectuate the orders described in paragraph (1).

21 (4) A second or subsequent conviction for a violation
22 of any order described in paragraph (1) occurring within
23 seven years of a prior conviction for a violation of any of
24 those orders and involving an act of violence or “a
25 credible threat” of violence, as provided in subdivisions
26 (c) and (d) of Section 139, is punishable by imprisonment
27 in a county jail not to exceed one year, or in the state
28 prison for 16 months or two or three years.

29 (5) The prosecuting agency of each county shall have
30 the primary responsibility for the enforcement of the
31 orders described in paragraph (1).

32 (d) (1) If probation is granted upon conviction of a
33 violation of subdivision (c), the court shall require
34 participation in a batterer’s treatment program as a
35 condition of probation, unless, considering all of the facts
36 and circumstances, the court finds participating in a
37 batterer’s treatment program inappropriate for the
38 defendant.

39 (2) If probation is granted upon conviction of a
40 violation of subdivision (c), the conditions of probation

1 may include, in lieu of a fine, one or both of the following
2 requirements:

3 (A) That the defendant make payments to a battered
4 women's shelter, up to a maximum of one thousand
5 dollars (\$1,000).

6 (B) That the defendant provide restitution to
7 reimburse the victim for reasonable costs of counseling
8 and other reasonable expenses that the court finds are the
9 direct result of the defendant's offense.

10 (3) For any order to pay a fine, make payments to a
11 battered women's shelter, or pay restitution as a
12 condition of probation under this subdivision or
13 subdivision (c), the court shall make a determination of
14 the defendant's ability to pay. In no event shall any order
15 to make payments to a battered women's shelter be made
16 if it would impair the ability of the defendant to pay direct
17 restitution to the victim or court-ordered child support.

18 (4) Where the injury to a married person is caused in
19 whole or in part by the criminal acts of his or her spouse
20 in violation of subdivision (c), the community property
21 may not be used to discharge the liability of the offending
22 spouse for restitution to the injured spouse, required by
23 Section 1203.04, as operative on or before August 2, 1995,
24 or Section 1202.4, or to a shelter for costs with regard to
25 the injured spouse and dependents, required by this
26 subdivision, until all separate property of the offending
27 spouse is exhausted.

28 (5) Any person violating any order described in
29 subdivision (c), may be punished for any substantive
30 offenses described under Section 136.1 or 646.9. No
31 finding of contempt shall be a bar to prosecution for a
32 violation of Section 136.1 or 646.9. However, any person
33 held in contempt for a violation of subdivision (c) shall be
34 entitled to credit for any punishment imposed as a result
35 of that violation against any sentence imposed upon
36 conviction of an offense described in Section 136.1 or
37 646.9. Any conviction or acquittal for any substantive
38 offense under Section 136.1 or 646.9 shall be a bar to a
39 subsequent punishment for contempt arising out of the
40 same act.

1 SEC. 3. Section 273.5 of the Penal Code is amended to
2 read:

3 273.5. (a) Any person who willfully inflicts upon his
4 or her spouse, or any person who willfully inflicts upon
5 any person with whom he or she is cohabiting, or any
6 person who willfully inflicts upon any person who is the
7 mother or father of his or her child, corporal injury
8 resulting in a traumatic condition, is guilty of a felony, and
9 upon conviction thereof shall be punished by
10 imprisonment in the state prison for two, three, or four
11 years, or in a county jail for not more than one year, or by
12 a fine of up to six thousand dollars (\$6,000) or by both.

13 (b) Holding oneself out to be the husband or wife of
14 the person with whom one is cohabiting is not necessary
15 to constitute cohabitation as the term is used in this
16 section.

17 (c) As used in this section, “traumatic condition”
18 means a condition of the body, such as a wound or
19 external or internal injury, whether of a minor or serious
20 nature, caused by a physical force.

21 (d) For the purpose of this section, a person shall be
22 considered the father or mother of another person’s child
23 if the alleged male parent is presumed the natural father
24 under Sections 7611 and 7612 of the Family Code.

25 (e) In any case in which a person is convicted of
26 violating this section and probation is granted, the court
27 shall require participation in a batterer’s treatment
28 program as a condition of probation, as specified in
29 Section 1203.097.

30 (f) If probation is granted, or the execution or
31 imposition of a sentence is suspended, for any person
32 convicted under subdivision (a) who previously has been
33 convicted under subdivision (a) for an offense that
34 occurred within seven years of the offense of the second
35 conviction, it shall be a condition thereof that he or she
36 be imprisoned in a county jail for not less than 96 hours
37 and that he or she participate in, for no less than one year,
38 and successfully complete, a batterer’s treatment
39 program, as designated by the court pursuant to Section
40 1203.097. However, the court, upon a showing of good

1 cause, may find that the mandatory minimum
2 imprisonment, as required by this subdivision, shall not be
3 imposed and grant probation or the suspension of the
4 execution or imposition of a sentence.

5 (g) If probation is granted, or the execution or
6 imposition of a sentence is suspended, for any person
7 convicted under subdivision (a) who previously has been
8 convicted of ~~two or more violations~~ *a violation* of
9 subdivision (a) for ~~offenses~~ *an offense* that occurred
10 within seven years of the most recent conviction, it shall
11 be a condition thereof ~~that he or she be imprisoned in a~~
12 ~~county jail for not less than 30 days and that he or she~~
13 ~~participate in for no less than one year, and successfully~~
14 ~~complete, a batterer's treatment program as designated~~
15 ~~by the court pursuant to Section 1203.097, of probation, in~~
16 ~~addition to the provisions contained in Section 1203.097,~~
17 ~~that he or she be imprisoned in a county jail for not less~~
18 ~~than 15 days. If the defendant has been previously~~
19 ~~convicted of two or more offenses that occurred within~~
20 ~~seven years of a violation of subdivision (a), it shall be a~~
21 ~~condition of probation, in addition to the provisions~~
22 ~~contained in Section 1203.097, that he or she be~~
23 ~~imprisoned in a county jail for not less than 60 days.~~
24 However, the court, upon a showing of good cause, may
25 find that the mandatory minimum imprisonment, as
26 required by this subdivision, shall not be imposed ~~and~~
27 ~~grant probation or the suspension of the execution or~~
28 ~~imposition of a sentence.~~

29 (h) If probation is granted upon conviction of a
30 violation of subdivision (a), the conditions of probation
31 may include, in lieu of a fine, one or both of the following
32 requirements:

33 (1) That the defendant make payments to a battered
34 women's shelter, up to a maximum of five thousand
35 dollars (\$5,000), pursuant to Section 1203.097.

36 (2) That the defendant reimburse the victim for
37 reasonable costs of counseling and other reasonable
38 expenses that the court finds are the direct result of the
39 defendant's offense.

1 For any order to pay a fine, make payments to a
2 battered women's shelter, or pay restitution as a
3 condition of probation under this subdivision, the court
4 shall make a determination of the defendant's ability to
5 pay. In no event shall any order to make payments to a
6 battered women's shelter be made if it would impair the
7 ability of the defendant to pay direct restitution to the
8 victim or court-ordered child support. Where the injury
9 to a married person is caused in whole or in part by the
10 criminal acts of his or her spouse in violation of this
11 section, the community property may not be used to
12 discharge the liability of the offending spouse for
13 restitution to the injured spouse, required by Section
14 1203.04, as operative on or before August 2, 1995, or
15 Section 1202.4, or to a shelter for costs with regard to the
16 injured spouse and dependents, required by this section,
17 until all separate property of the offending spouse is
18 exhausted.

19 SEC. 4. Section 273.55 of the Penal Code is repealed.

20 ~~273.55. Any person convicted of violating Section~~
21 ~~273.5, for acts occurring within seven years of a previous~~
22 ~~conviction under subdivision (d) of Section 243, or under~~
23 ~~Section 243.4, 244, 244.5, 245, or 273.5, if the victim of the~~
24 ~~prior offense is a person designated under subdivision (a)~~
25 ~~of Section 273.5, shall be punished by imprisonment in a~~
26 ~~county jail for not more than one year, or by~~
27 ~~imprisonment in the state prison for two, four, or five~~
28 ~~years, or by both imprisonment and a fine of up to ten~~
29 ~~thousand dollars (\$10,000). If probation is granted or the~~
30 ~~execution or imposition of a sentence is suspended for any~~
31 ~~person sentenced under this section, Section 273.56 shall~~
32 ~~apply.~~

33 SEC. 5. Section 273.56 of the Penal Code is repealed.

34 ~~273.56. (a) If probation is granted, or the execution~~
35 ~~or imposition of sentence is suspended, for any person~~
36 ~~convicted under Section 273.5 and sentenced under~~
37 ~~Section 273.55, it shall be a condition of probation that he~~
38 ~~or she be imprisoned in a county jail for not less than 15~~
39 ~~days and that he or she participate in for no less than one~~
40 ~~year, and successfully complete, a batterer's treatment~~

1 ~~program, as designated by the court. However, the court,~~
2 ~~upon a showing of good cause, may find that the~~
3 ~~mandatory minimum imprisonment, or the participation~~
4 ~~in a batterer's treatment program, or both the mandatory~~
5 ~~minimum imprisonment and participation in a batterer's~~
6 ~~treatment program, as required by this subdivision, shall~~
7 ~~not be imposed and grant probation or the suspension of~~
8 ~~the execution or imposition of the sentence. Conditions~~
9 ~~of probation may also include conditions set forth in~~
10 ~~subdivision (h) of Section 273.5.~~

11 ~~(b) If probation is granted, or the execution or~~
12 ~~imposition of a sentence is suspended, for any person~~
13 ~~convicted under Section 273.5 and sentenced under~~
14 ~~Section 273.55 because he or she has been convicted~~
15 ~~previously for two or more offenses that occurred within~~
16 ~~seven years of an offense designated in subdivision (a) of~~
17 ~~Section 273.55, against the class of persons designated~~
18 ~~under subdivision (a) of Section 273.5, it shall be a~~
19 ~~condition of probation that he or she be imprisoned in a~~
20 ~~county jail for not less than 60 days and that he or she~~
21 ~~participate in for no less than one year, and successfully~~
22 ~~complete, a batterer's treatment program, as designated~~
23 ~~by the court. However, the court upon a showing of good~~
24 ~~cause, may find that the mandatory minimum~~
25 ~~imprisonment, or the participation in a batterer's~~
26 ~~treatment program, or both the mandatory minimum~~
27 ~~imprisonment and participation in a batterer's treatment~~
28 ~~program, as required by this subdivision, shall not be~~
29 ~~imposed and grant probation or the suspension of the~~
30 ~~execution or imposition of the sentence. Conditions of~~
31 ~~probation may also include conditions set forth in~~
32 ~~subdivision (h) of Section 273.5.~~

33 SEC. 6. Section 273.6 of the Penal Code is amended to
34 read:

35 273.6. (a) Any intentional and knowing violation of a
36 protective order, as defined in Section 6218 of the Family
37 Code, or of an order issued pursuant to Section 527.6 or
38 527.8 of the Code of Civil Procedure is a misdemeanor
39 punishable by a fine of not more than one thousand
40 dollars (\$1,000), or by imprisonment in a county jail for

1 not more than one year, or by both the fine and
2 imprisonment.

3 (b) In the event of a violation of subdivision (a) which
4 results in physical injury, the person shall be punished by
5 a fine of not more than two thousand dollars (\$2,000), or
6 by imprisonment in a county jail for not less than 30 days
7 nor more than one year, or by both the fine and
8 imprisonment. However, if the person is imprisoned in a
9 county jail for at least 48 hours, the court may, in the
10 interests of justice and for reasons stated on the record,
11 reduce or eliminate the 30-day minimum imprisonment
12 required by this subdivision. In determining whether to
13 reduce or eliminate the minimum imprisonment
14 pursuant to this subdivision, the court shall consider the
15 seriousness of the facts before the court, whether there
16 are additional allegations of a violation of the order during
17 the pendency of the case before the court, the probability
18 of future violations, the safety of the victim, and whether
19 the defendant has successfully completed or is making
20 progress with counseling.

21 (c) Subdivisions (a) and (b) shall apply to the
22 following court orders:

23 (1) Any order issued pursuant to Section 6320 of the
24 Family Code.

25 (2) An order excluding one party from the family
26 dwelling or from the dwelling of the other.

27 (3) An order enjoining a party from specified behavior
28 which the court determined was necessary to effectuate
29 the order under subdivision (a).

30 (4) *Any order issued by another state that is*
31 *recognized under Section 6380.5 of the Family Code.*

32 (d) A subsequent conviction for a violation of an order
33 described in subdivision (a), occurring within seven
34 years of a prior conviction for a violation of an order
35 described in subdivision (a) and involving an act of
36 violence or “a credible threat” of violence, as defined in
37 subdivision (c) of Section 139, is punishable by
38 imprisonment in a county jail not to exceed one year, or
39 in the state prison.

1 (e) In the event of a subsequent conviction for a
2 violation of an order described in subdivision (a) for an
3 act occurring within one year of a prior conviction for a
4 violation of an order described in subdivision (a) that
5 results in physical injury to the same victim, the person
6 shall be punished by a fine of not more than two thousand
7 dollars (\$2,000), or by imprisonment in a county jail for
8 not less than six months nor more than one year, by both
9 that fine and imprisonment, or by imprisonment in the
10 state prison. However, if the person is imprisoned in a
11 county jail for at least 30 days, the court may, in the
12 interests of justice and for reasons stated in the record,
13 reduce or eliminate the six-month minimum
14 imprisonment required by this subdivision. In
15 determining whether to reduce or eliminate the
16 minimum imprisonment pursuant to this subdivision, the
17 court shall consider the seriousness of the facts before the
18 court, whether there are additional allegations of a
19 violation of the order during the pendency of the case
20 before the court, the probability of future violations, the
21 safety of the victim, and whether the defendant has
22 successfully completed or is making progress with
23 counseling.

24 (f) The prosecuting agency of each county shall have
25 the primary responsibility for the enforcement of orders
26 issued pursuant to subdivisions (a), (b), (d), and (e).

27 (g) The court may order a person convicted under this
28 section to undergo counseling, and, if appropriate, to
29 complete a batterer's treatment program.

30 (h) If probation is granted upon conviction of a
31 violation of subdivision (a), (b), or (c), the conditions of
32 probation may include, in lieu of a fine, one or both of the
33 following requirements:

34 (1) That the defendant make payments to a battered
35 women's shelter, up to a maximum of five thousand
36 dollars (\$5,000), pursuant to Section 1203.097.

37 (2) That the defendant reimburse the victim for
38 reasonable costs of counseling and other reasonable
39 expenses that the court finds are the direct result of the
40 defendant's offense.

1 (i) For any order to pay a fine, make payments to a
2 battered women's shelter, or pay restitution as a
3 condition of probation under subdivision (e), the court
4 shall make a determination of the defendant's ability to
5 pay. In no event shall any order to make payments to a
6 battered women's shelter be made if it would impair the
7 ability of the defendant to pay direct restitution to the
8 victim or court-ordered child support. Where the injury
9 to a married person is caused in whole or in part by the
10 criminal acts of his or her spouse in violation of this
11 section, the community property may not be used to
12 discharge the liability of the offending spouse for
13 restitution to the injured spouse, required by Section
14 1203.04, as operative on or before August 2, 1995, or
15 Section 1202.4, or to a shelter for costs with regard to the
16 injured spouse and dependents, required by this section,
17 until all separate property of the offending spouse is
18 exhausted.

19 SEC. 7. Section 1328 of the Penal Code is amended to
20 read:

21 1328. (a) A subpoena may be served by any person,
22 except that the defendant may not serve a subpoena in
23 the criminal action to which he or she is a party, but a
24 peace officer shall serve in his or her county any subpoena
25 delivered to him or her for service, either on the part of
26 the people or of the defendant, and shall, without delay,
27 make a written return of the service, subscribed by him
28 or her, stating the time and place of service. The service
29 is made by delivering a copy of the subpoena to the
30 witness personally.

31 (b) (1) When service is to be made on a minor, service
32 shall be made on the minor's parent, guardian,
33 conservator, or similar fiduciary, or if one of them cannot
34 be located with reasonable diligence, then service shall be
35 made on any person having the care or control of the
36 minor or with whom the minor resides or by whom the
37 minor is employed, unless the parent, guardian,
38 conservator, or fiduciary or other specified person is the
39 defendant, and on the minor if the minor is 12 years of age
40 or older. The person so served shall have the obligation

1 of producing the minor at the time and place designated
2 in the subpoena. A willful failure to produce the minor is
3 punishable as a contempt pursuant to Section 1218 of the
4 Code of Civil Procedure. The person so served shall be
5 allowed the fees and expenses that are provided for
6 subpoenaed witnesses.

7 (2) *The court having jurisdiction of the case shall have*
8 *the power to appoint a guardian ad litem to receive*
9 *service of a subpoena of the child and shall have the*
10 *power to produce the child ordered to court under this*
11 *section.*

12 (c) Whenever any peace officer designated in Section
13 830 is required as a witness before any court or magistrate
14 in any action or proceeding in connection with a matter
15 regarding an event or transaction which he or she has
16 perceived or investigated in the course of his or her
17 duties, a criminal subpoena issued pursuant to this
18 chapter requiring his or her attendance may be served
19 either by delivering a copy to the peace officer personally
20 or by delivering two copies to his or her immediate
21 superior or agent designated by his or her immediate
22 superior to receive the service; or, in those counties
23 where the local agencies have consented with the
24 marshal's office or sheriff's office, where appropriate, to
25 participate, by sending a copy by electronic means,
26 including electronic mail, computer modem, facsimile, or
27 other electronic means, to his or her immediate superior
28 or agent designated by the immediate superior to receive
29 the service. If the service is made by electronic means, the
30 immediate superior or agency designated by his or her
31 immediate superior shall acknowledge receipt of the
32 subpoena by telephone or electronic means to the sender
33 of origin. If service is made upon the immediate superior
34 or agent designated by the immediate superior, the
35 immediate superior or the agent shall deliver a copy of
36 the subpoena to the peace officer as soon as possible and
37 in no event later than a time which will enable the peace
38 officer to comply with the subpoena.

39 (d) If the immediate superior or his or her designated
40 agent upon whom service is attempted to be made knows



1 he or she will be unable to deliver a copy of the subpoena
2 to the peace officer within a time which will allow the
3 peace officer to comply with the subpoena, the
4 immediate superior or agent may refuse to accept service
5 of process and is excused from any duty, liability, or
6 penalty arising in connection with the service, upon
7 notifying the server of that fact.

8 (e) If the immediate superior or his or her agent is
9 tendered service of a subpoena less than five working
10 days prior to the date of hearing, and he or she is not
11 reasonably certain he or she can complete the service, he
12 or she may refuse acceptance.

13 (f) If the immediate superior or agent upon whom
14 service has been made, subsequently determines that he
15 or she will be unable to deliver a copy of the subpoena to
16 the peace officer within a time which will allow the peace
17 officer to comply with the subpoena, the immediate
18 superior or agent shall notify the server or his or her office
19 or agent not less than 48 hours prior to the hearing date
20 indicated on the subpoena, and is thereby excused from
21 any duty, liability, or penalty arising because of his or her
22 failure to deliver a copy of the subpoena to the peace
23 officer. The server, so notified, is therewith responsible
24 for preparing the written return of service and for
25 notifying the originator of the subpoena if required.

26 (g) Notwithstanding subdivision (c), in the case of
27 peace officers employed by the California Highway
28 Patrol, if service is made upon the immediate superior or
29 upon an agent designated by the immediate superior of
30 the peace officer, the immediate superior or the agent
31 shall deliver a copy of the subpoena to the peace officer
32 on the officer's first workday following acceptance of
33 service of process. In this case, failure of the immediate
34 superior or the designated agent to deliver the subpoena
35 shall not constitute a defect in service.

36 SEC. 8. Section 11163.3 of the Penal Code is amended
37 to read:

38 11163.3. (a) A county may establish an interagency
39 domestic violence death review team to assist local
40 agencies in identifying and reviewing domestic violence

1 deaths, including homicides and suicides, and facilitating
2 communication among the various agencies involved in
3 domestic violence cases. Interagency domestic violence
4 death review teams have been used successfully to ensure
5 that incidents of domestic violence and abuse are
6 recognized and that agency involvement is reviewed to
7 develop recommendations for policies and protocols for
8 community prevention and intervention initiatives to
9 reduce and eradicate the incidence of domestic violence.

10 (b) For purposes of this section, “abuse” has the
11 meaning set forth in Section 6203 of the Family Code and
12 “domestic violence” has the meaning set forth in Section
13 6211 of the Family Code.

14 (c) A county may develop a protocol that may be used
15 as a guideline to assist coroners and other persons who
16 perform autopsies on domestic violence victims in the
17 identification of domestic violence, in the determination
18 of whether domestic violence contributed to death or
19 whether domestic violence had occurred prior to death,
20 but was not the actual cause of death, and in the proper
21 written reporting procedures for domestic violence,
22 including the designation of the cause and mode of death.

23 (d) County domestic violence death review teams
24 shall be comprised of, but not limited to, the following:

25 (1) Experts in the field of forensic pathology.

26 (2) Medical personnel with expertise in domestic
27 violence abuse.

28 (3) Coroners and medical examiners.

29 (4) Criminologists.

30 (5) District attorneys and city attorneys.

31 (6) Domestic violence shelter service staff and
32 battered women’s advocates.

33 (7) Law enforcement personnel.

34 (8) Representatives of local agencies that are involved
35 with domestic violence abuse reporting.

36 (9) County health department staff who deal with
37 domestic violence victims’ health issues.

38 (10) Representatives of local child abuse agencies.

39 (11) Local professional associations of persons
40 described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Any member of the domestic violence death review team, their agent or employee who, without the prior approval of all of the members of the team, discloses or causes to be disclosed to anyone or any agency not a member of the team, any information obtained during investigations conducted under the authority of this statute, is guilty of a misdemeanor, and punishable by a fine up to ten thousand dollars (\$10,000) and up to one year in county jail.

(h) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) of this

1 subdivision may rely on the request in determining
2 whether information may be disclosed to the team.

3 (1) No individual or agency that has information
4 governed by this subdivision shall be required to disclose
5 information. The intent of this subdivision is to allow the
6 voluntary disclosure of information by the individual or
7 agency that has the information.

8 (2) The following information may be disclosed
9 pursuant to this subdivision:

10 (A) Notwithstanding Section 56.10 of the Civil Code,
11 medical information.

12 (B) Notwithstanding Section 5328 of the Welfare and
13 Institutions Code, mental health information.

14 (C) Notwithstanding Section 15633.5 of the Welfare
15 and Institutions Code, information from elder abuse
16 reports and investigations, except the identity of persons
17 who have made reports, which shall not be disclosed.

18 (D) Notwithstanding Section 11167.5 of the Penal
19 Code, information from child abuse reports and
20 investigations, except the identity of persons who have
21 made reports, which shall not be disclosed.

22 (E) State summary criminal history information,
23 criminal offender record information, and local summary
24 criminal history information, as defined in Sections 11075,
25 11105, and 13300 of the Penal Code.

26 (F) Notwithstanding Section 11163.2 of the Penal
27 Code, information pertaining to reports by health
28 practitioners of persons suffering from physical injuries
29 inflicted by means of a firearm or of persons suffering
30 physical injury where the injury is a result of assaultive or
31 abusive conduct, and information relating to whether a
32 physician referred the person to local domestic violence
33 services as recommended by Section 11161 of the Penal
34 Code.

35 (G) Notwithstanding Section 827 of the Welfare and
36 Institutions Code, information in any juvenile court
37 proceeding.

38 (H) Information maintained by the Family Court,
39 including information relating to the Family Conciliation
40 Court Law pursuant to Section 1818 of the Family Code,

1 *and Mediation of Custody and Visitation Issues pursuant*
2 *to Section 3177 of the Family Code.*

3 *(I) Information provided to probation officers in the*
4 *course of the performance of their duties, including, but*
5 *not limited to, the duty to prepare reports pursuant to*
6 *Section 1203.10 of the Penal Code, as well as the*
7 *information on which these reports are based.*

8 *(J) Notwithstanding Section 10825 of the Welfare and*
9 *Institutions Code, records of in-home supportive services,*
10 *unless disclosure is prohibited by federal law.*

11 *(3) The disclosure of written and oral information*
12 *authorized under this subdivision shall apply*
13 *notwithstanding Sections 2263, 2918, 4982, and 6068 of the*
14 *Business and Professions Code, or the lawyer-client*
15 *privilege protected by Article 3 (commencing with*
16 *Section 950) of Chapter 4 of Division 8 of the Evidence*
17 *Code, the physician-patient privilege protected by*
18 *Article 6 (commencing with Section 990) of Chapter 4 of*
19 *Division 8 of the Evidence Code, the*
20 *psychotherapist-patient privilege protected by Article 7*
21 *(commencing with Section 1010) of Chapter 4 of Division*
22 *8 of the Evidence Code, the sexual assault*
23 *victim-counselor privilege protected by Article 8.5*
24 *(commencing with Section 1035) of Chapter 4 of Division*
25 *8 of the Evidence Code, and the domestic violence*
26 *victim-counselor privilege protected by Article 8.7*
27 *(commencing with Section 1037) of Chapter 4 of Division*
28 *8 of the Evidence Code.*

29 SEC. 9. Section 11163.6 is added to the Penal Code, to
30 read:

31 11163.6. In order to ensure consistent and uniform
32 results, data shall be collected and summarized by the
33 domestic violence death review teams to show the
34 statistical occurrence of all domestic violence deaths in
35 the team's county that occur under the following
36 circumstances:

37 (a) The deceased was a victim of a homicide
38 committed by a current or former spouse, fiancé, or
39 dating partner.

(b) The deceased was the victim of a suicide, was the current or former spouse, fiancé, or dating partner of the perpetrator and was also the victim of previous acts of domestic violence.

(c) The deceased was the perpetrator of the homicide of a former or current spouse, fiancé, or dating partner and the perpetrator was also the victim of a suicide.

(d) The deceased was the perpetrator of the homicide of a former or current spouse, fiancé, or dating partner and the perpetrator was also the victim of a homicide related to the domestic homicide incident.

(e) The deceased was a child of either the homicide victim or the perpetrator, or both.

(f) The deceased was a current or former spouse, fiancé, or dating partner of the current or former spouse, fiancé, or dating partner of the perpetrator.

(g) The deceased was a law enforcement officer, emergency medical personnel, or other agency responding to a domestic violence incident.

(h) The deceased was a family member, other than identified above, of the perpetrator.

(i) The deceased was the perpetrator of the homicide of a family member, other than identified above.

(j) The deceased was a person not included in the above categories and the homicide was related to domestic violence.

SEC. 10. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

~~(1) “Abuse” means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.~~

~~(2) “Family violence” has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.~~

~~(3) “Family or household member” means a spouse, former spouse, parent, child, any person related by~~

~~consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.~~

~~The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).~~

~~(4)~~

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To engage in any behavior that has been or could be enjoined pursuant to Section 6320 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in

1 subdivision (a) of Section 830.1, a peace officer of the
2 Department of the California Highway Patrol, as defined
3 in subdivision (a) of Section 830.2, a member of the
4 University of California Police Department, as defined in
5 subdivision (b) of Section 830.2, an officer listed in Section
6 830.6 while acting in the course and scope of his or her
7 employment as a peace officer, a member of a California
8 State University Police Department, as defined in
9 subdivision (c) of Section 830.2, a peace officer of the
10 Department of Parks and Recreation, as defined in
11 subdivision (f) of Section 830.2, a peace officer, as defined
12 in subdivision (d) of Section 830.31, and a peace officer,
13 as defined in Section 830.5, who is at the scene of a ~~family~~
14 *domestic* violence incident involving a threat to human
15 life or a physical assault, ~~may~~ *shall* take temporary custody
16 of any firearm or other deadly weapon in plain sight or
17 discovered pursuant to a consensual search as necessary
18 for the protection of the peace officer or other persons
19 present. Upon taking custody of a firearm or other deadly
20 weapon, the officer shall give the owner or person who
21 possessed the firearm a receipt. The receipt shall describe
22 the firearm or other deadly weapon and list any
23 identification or serial number on the firearm. The
24 receipt shall indicate where the firearm or other deadly
25 weapon can be recovered and the date after which the
26 owner or possessor can recover the firearm or other
27 deadly weapon. No firearm or other deadly weapon shall
28 be held less than 48 hours. Except as provided in
29 subdivision (e), if a firearm or other deadly weapon is not
30 retained for use as evidence related to criminal charges
31 brought as a result of the family violence incident or is not
32 retained because it was illegally possessed, the firearm or
33 other deadly weapon shall be made available to the owner
34 or person who was in lawful possession 48 hours after the
35 seizure or as soon thereafter as possible, but no later than
36 72 hours after the seizure. In any civil action or
37 proceeding for the return of firearms or ammunition or
38 other deadly weapon seized by any state or local law
39 enforcement agency and not returned within 72 hours
40 following the initial seizure, except as provided in

1 subdivision (c), the court shall allow reasonable
2 attorney's fees to the prevailing party.

3 (c) Any firearm or other deadly weapon which has
4 been taken into custody that has been stolen shall be
5 restored to the lawful owner, as soon as its use for
6 evidence has been served, upon his or her identification
7 of the firearm or other deadly weapon and proof of
8 ownership.

9 (d) Any firearm or other deadly weapon taken into
10 custody and held by a police, university police, or sheriff's
11 department or by a marshal's office, by a peace officer of
12 the Department of the California Highway Patrol, as
13 defined in subdivision (a) of Section 830.2, by a peace
14 officer of the Department of Parks and Recreation, as
15 defined in subdivision (f) of Section 830.2, by a peace
16 officer, as defined in subdivision (d) of Section 830.31, or
17 by a peace officer, as defined in Section 830.5, for longer
18 than 12 months and not recovered by the owner or person
19 who has lawful possession at the time it was taken into
20 custody, shall be considered a nuisance and sold or
21 destroyed as provided in subdivision (c) of Section 12028.
22 Firearms or other deadly weapons not recovered within
23 12 months due to an extended hearing process as
24 provided in subdivision (i), are not subject to destruction
25 until the court issues a decision, and then only if the court
26 does not order the return of the firearm or other deadly
27 weapon to the owner.

28 (e) In those cases where a law enforcement agency has
29 reasonable cause to believe that the return of a firearm
30 or other deadly weapon would be likely to result in
31 endangering the victim or the person reporting the
32 assault or threat, the agency shall advise the owner of the
33 firearm or other deadly weapon, and within 10 days of the
34 seizure, initiate a petition in superior court to determine
35 if the firearm or other deadly weapon should be returned.

36 (f) The law enforcement agency shall inform the
37 owner or person who had lawful possession of the firearm
38 or other deadly weapon, at that person's last known
39 address by registered mail, return receipt requested, that
40 he or she has 30 days from the date of receipt of the notice

1 to respond to the court clerk to confirm his or her desire
2 for a hearing, and that the failure to respond shall result
3 in a default order forfeiting the confiscated firearm or
4 other deadly weapon. For the purposes of this
5 subdivision, the person's last known address shall be
6 presumed to be the address provided to the law
7 enforcement officer by that person at the time of the
8 family violence incident. In the event the person whose
9 firearm or other deadly weapon was seized does not
10 reside at the last address provided to the agency, the
11 agency shall make a diligent, good faith effort to learn the
12 whereabouts of the person and to comply with these
13 notification requirements.

14 (g) If the person requests a hearing, the court clerk
15 shall set a hearing no later than 30 days from receipt of
16 that request. The court clerk shall notify the person, the
17 law enforcement agency involved, and the district
18 attorney of the date, time, and place of the hearing.
19 Unless it is shown by clear and convincing evidence that
20 the return of the firearm or other deadly weapon would
21 result in endangering the victim or the person reporting
22 the assault or threat, the court shall order the return of the
23 firearm or other deadly weapon and shall award
24 reasonable attorney's fees to the prevailing party.

25 (h) If the person does not request a hearing or does not
26 otherwise respond within 30 days of the receipt of the
27 notice, the law enforcement agency may file a petition for
28 an order of default and may dispose of the firearm or
29 other deadly weapon as provided in Section 12028.

30 (i) If, at the hearing, the court does not order the
31 return of the firearm or other deadly weapon to the
32 owner or person who had lawful possession, that person
33 may petition the court for a second hearing within 12
34 months from the date of the initial hearing. If the owner
35 or person who had lawful possession does not petition the
36 court within this 12-month period for a second hearing or
37 is unsuccessful at the second hearing in gaining return of
38 the firearm or other deadly weapon, the firearm or other
39 deadly weapon may be disposed of as provided in Section
40 12028.



1 (j) The law enforcement agency, or the individual law
2 enforcement officer, shall not be liable for any act in the
3 good faith exercise of this section.

4 SEC. 11. It is the intent of the Legislature to codify the
5 provisions of the federal Violent Crime Control and Law
6 Enforcement Act of 1994, which makes it unlawful for any
7 person subject to a restraining order to possess or
8 purchase a firearm or ammunition.

9 SEC. 12. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

